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**PATRICIA Y. LEE**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street NW  
Room 222  
Washington, D.C. 20554

Re: Opposition to Petition for Reconsideration  
In the Matter of Amendment of Section 73.202(b),  
FM Broadcast Stations  
(Mt. Juliet and Belle Meade, Tennessee)  
MM Docket No. 97-97; RM-9047

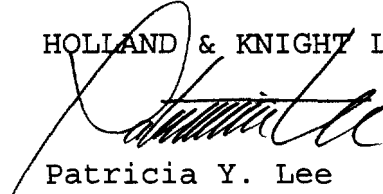
Dear Mr. Caton:

Transmitted herewith on behalf of Mt. Juliet Broadcasting, Inc., permittee of FM station WNPL, Belle Meade, Tennessee, are an original and four copies of its Opposition to the Petition for Reconsideration of the Mass Media Bureau's Report and Order in the above-referenced rule making filed by The Cromwell Group, Inc.

Should any questions arise concerning this matter, please communicate directly with the undersigned.

Very truly yours,

HOLLAND & KNIGHT LLP

  
Patricia Y. Lee  
Counsel for  
Mt. Juliet Broadcasting, Inc.

Enclosures

cc: Mr. Robert Hayne, FCC, by hand

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**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
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In the Matter of )  
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Amendment of Section 73.202(b) )  
Table of FM Allotments )  
(Mt. Juliet and Belle Meade, )  
Tennessee) )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 97-97  
RM No. 9047

To: Chief, Policy and Rules Division

**OPPOSITION TO PETITION FOR RECONSIDERATION**

Mt. Juliet Broadcasting, Inc. ("MJB"), permittee of FM station WNPL, Mt. Juliet, Tennessee, hereby submits its Opposition to the Petition for Reconsideration filed on August 12, 1997, by The Cromwell Group, Inc. ("Petitioner" or "Cromwell"), with regard to the above-captioned rule making proceeding. The following is submitted in opposition to the Petition for Reconsideration:

**BACKGROUND**

1. On February 21, 1997, MJB filed a Petition for Rule Making requesting reallocation of Channel 294A from Mt. Juliet, Tennessee to Belle Meade, Tennessee, as that community's first local transmission service, and modification of its construction permit to specify Belle Meade as the community of license.

2. On March 21, 1997, the Commission released a Notice of Proposed Rule Making ("NPRM") seeking comment on MJB's proposed allotment plan. The NPRM established filing deadlines of May 12, 1997 for comments and May 27, 1997 for reply comments. Timely comments were filed by MJB, Great Southern Broadcasting Company, Inc., and David J. Waynick.

3. After the comment deadlines had closed, on July 16, 1997, Petitioner filed its Comments and Motion for Acceptance of Late-Filed Comments. MJB filed a response to Petitioner's Late-Filed Comments on August 26, 1997.

4. On July 25, 1997, the Mass Media Bureau released its July 16, 1997 report and order granting MJB's request for reallocation of Channel 294A from Mt. Juliet to Belle Meade, reallocated Channel 294A to Belle Meade, and modified MJB's construction permit to specify Belle Meade as the community of license. *See In the Matter of Amendment of Section 73.202(b), Table of Amendments, FM Broadcast Stations (Mt. Juliet and Belle Meade, Tennessee)*, Report & Order, MM Docket No. 97-97; RM-9047 (Mass Media Bureau 1997).

5. Then, on August 12, 1997, Petitioner filed the instant Petition for Reconsideration. The sole ground advanced by Cromwell in support of its Petition for Reconsideration is that the R&O failed to consider "controlling authority concerning the appropriate remedy for a defective allotment." *See Cromwell's Petition for Reconsideration ("Pet. for Recon.")* at ¶ 2. Specifically, Petitioner argues that the Commission should have deleted, rather than reallocate, Channel 294A.

#### ARGUMENT

6. Petitioner is wrong. The Commission's reallocation of Channel 294A from Mt. Juliet to Belle Meade is consistent with Commission policy and case precedent. Accordingly, the Commission should deny the instant Petition.

7. Petitions for reconsideration are properly before the Commission only under a limited number of circumstances. Reconsideration based on new facts is appropriate only when these facts relate to events subsequent to the last opportunity for submission, were

unknown and could not have been known by the petitioner at the time of the last opportunity, or the Commission determines that subsequent consideration is required to protect the public interest. *See* Section 1.429 of the Commission's Rules.

8. Cromwell's petition does not meet these criteria. Petitioner has presented no new facts or arguments that would warrant reversal of the Commission's action reallocating Channel 294A from Mt. Juliet to Belle Meade. Further, the Allocations Branch adequately considered the proposed alternatives and substantiated the rationale behind its decision.

9. Consistent with the Commission's FM allotment policy, the Allocations Branch compared the existing allotment of Channel 294A at Mt. Juliet with the proposed allotment to Belle Meade to determine whether the reallocation would result in a preferential arrangement of allotments. *See* R&O at ¶ 2. Based upon the evidence presented in the comments and reply comments and upon its own engineering study, the Allocations Branch correctly concluded that because a Channel 294A operation cannot be implemented at Mt. Juliet due to electromagnetic interference to FAA navigation facilities, a Channel 294A allotment at Belle Meade would be preferable to the existing defective allotment at Mt. Juliet. *See* R&O at ¶ 7. Accordingly, the Allocations Branch ordered the reallocation of Channel 294A to Belle Meade and the modification of MJB's construction permit to specify Belle Meade. R&O at ¶¶ 8 & 9.

10. Further, Petitioner's argument that "deletion" is the only appropriate remedy for a defective allotment is without merit. *See* Pet. for Recon. at ¶ 3. Under circumstances similar to those here, the Commission has granted a specific request by an interested party for reallocation of a technically defective allotment.

11. In *In the Matter of Amendment of Section 73.202(b), Table of Amendments, FM Broadcast Stations (Sanibel and San Carlos Park, Florida)*, Report & Order, 10 FCC Rcd 7215 (Mass Media Bureau 1995) ("*Sanibel*"), a case with facts virtually identical to those here, the Mass Media Bureau reallocated Channel 253A from Sanibel to San Carlos Park, Florida, because it was impossible to provide transmission service at Sanibel.

12. There, Ruth Communications Corporation ("Ruth"), permittee of Station WRWX(FM), Channel 253A, Sanibel, Florida, filed a petition for rule making requesting the reallocation of Channel 253A from Sanibel to San Carlos Park, as that community's first local transmission service. Ruth had attempted to construct and operate Station WRWX(FM) at Sanibel since September 1988, but was never able to secure a transmitter site at Sanibel. Various federal, state, and local authorities objected to Ruth's proposed sites for a number of reasons, including preservation of sensitive wetlands, protection of a bald eagle's nest, and short-spacing and other technical concerns. In granting Ruth's requested reallocation, the Mass Media Bureau found that the reallocation of Channel 253A from Sanibel to San Carlos Park would result in a preferential allocation because (1) despite Ruth's efforts to secure a site at Sanibel none appeared to be available, and (2) the reallocation of Channel 253A to San Carlos Park would provide that community with its first local transmission service.

13. Thus, contrary to Petitioner's assertions, not only is reallocation of a defective allocation an appropriate remedy, but MJB submits that it is the better remedy where the reallocation would provide the proposed community with its first local transmission service.

14. The cases relied on by Cromwell in support of its petition are distinguishable from the case here. In each case cited by Cromwell, the Commission was never asked to consider a petition for rule making requesting the reallocation of a technically defective allotment. See Pet. for Recon. at ¶ 4. Those cases are concerned only with consideration of a remedy for a defective allotment in the absence of a specific request for reallocation by an interested party.

15. This case is more like *Sanibel*, where the permittee of the FM station at the defective channel allotment specifically requests reallocation of the channel to a different community on the grounds that the channel is technically defective at the existing allotment and that the reallocation would provide the proposed community with its first local transmission service. Clearly, the provision of a first local transmission service better serves the public interest than does the denial of service to anyone by the deletion of a channel.

16. Thus, here, as in *Sanibel*, the Mass Media Bureau correctly reallocated the defective allotment to Belle Meade as proposed by MJB. In granting MJB's requested reallocation, the Allocations Branch followed precedent and, in any event, made the correct public interest determination that the reallocation to Belle Meade would be preferable to the existing technically defective allotment at Mt. Juliet. Accordingly, the Commission should deny Cromwell's Petition for Reconsideration.

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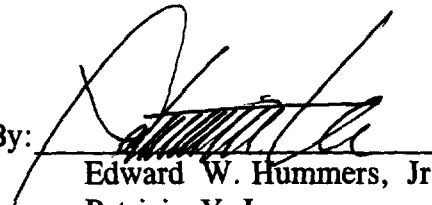
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WHEREFORE, for all these reasons, MJB respectfully requests that the Commission summarily deny the Petition for Reconsideration.

Respectfully submitted,

MT. JULIET BROADCASTING, INC.

By:



Edward W. Hummers, Jr.  
Patricia Y. Lee  
Its Counsel

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September 11, 1997

WAS1-288774

## CERTIFICATE OF SERVICE

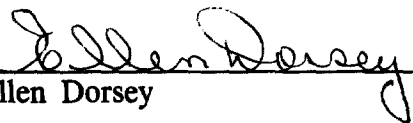
I, Ellen Dorsey, a secretary at the law firm of Holland & Knight LLP, do hereby certify that on this 11th day of September, 1997, copies of the foregoing Opposition to Petition for Reconsideration were served by First Class mail, postage prepaid, the following:

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Ellen Dorsey

WAS1-289645